INDEPENDENT BANKERS OF COLORADO
1580 Logan Street, Suite 510
Denver, Colorado 80203
Phone 303.832.2000
Fax 303.832.2040
www.ibcbanks.org

April 9, 2004

Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW
Mailstop 1-5
Washington, DC 20219
Attention: Docket No. 04-05
Via e-mail:
regs.comments@occ.treas.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1180
Via e-mail:
regs.comments@federalreserve.gov

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: EGRPRA Burden Reduction Comments
Via-mail: comments@fdic.gov

Re: EGRPRA Review of Consumer Protection Lending Related Rules

Dear Sir or Madam:

The Independent Bankers of Colorado (IBC) is the largest banker trade association in Colorado, exclusively representing community banks. On behalf of the IBC's Board of Directors and over 115 member banks, please accept the following comments regarding the EGRPRA review of consumer protection lending-related rules.

Regulatory burden is suffocating community banks and impairing their ability to serve their customers and their communities. Of equal concern is the fact that their customers and communities are receiving little, if any, ascertainable benefit from the ever-increasing laws and regulations imposed on community banks. Worse yet, consumers are paying higher costs for basic banking services as a result.

Proposed amendments to Regulations Z, B, E, M and DD and respective Official Staff Commentaries, and the proposal to Regulation Z that includes several technical revisions to the Staff Commentary

The proposal intends to make the form of disclosures consistent among various consumer protection regulations. Specifically, it adopts the "clear and conspicuous" standard, along with examples currently contained in the Commentary to Reg P (GLBA). These proposals are unworkable and implementation will impose huge costs on the community banking industry. The subjectivity of the proposals will make compliance uncertain and will open the door for expensive lawsuits without improving the disclosures in any meaningful way.

Burden on all institutions

The proposals will impose significant costs to every financial institution. If the proposals are adopted, financial institutions will have to review every single consumer financial product document and advertisement containing required disclosures. For every bank, this means reviewing hundreds of agreements, forms, statements, web pages, telephone scripts and radio advertisements. Once identified, the required disclosures will have to be segregated from non-required disclosures, analyzed and revised. This revision effort will be enormously time-consuming and expensive, as bank staff and lawyers debate everyday word. As the new terminology is determined, financial institutions must then attempt to format the new disclosures and address software demands. Software programs will have to be modified and in many places replaced; they will not be usable as the new disclosures will no longer fit in the original data fields. Staff training will be necessary, as well as modifications made to all training and audit materials.

For small institutions the challenges will be overwhelming. Compliance staff in a small institution wear many hats. They will be less able to manage those other bank functions while working on new compliance programs or, perhaps worse, not be able to work on the required changes. Ultimately, the costs of compliance, no matter what size the institution, add to the cost to consumers—which results in fewer choices for consumers, especially low- to moderate-income consumers. The ultimate result is to drive these consumers into the hands of fly-by-night predatory lenders. Recalling how many months it took to determine how to comply with GLBA and Regulation P (GLBA) and the changes to Regulation Z several years ago (which changed the format on credit card solicitation disclosures), the proposed changes too will takes institutions months of unnecessary busywork.

Lastly, the proposed changes will likely provoke the ever-popular class action litigation.

General approach/flexibility

Financial institutions can never be certain of whether they are adequately complying with ever-changing requirements and comparisons to one or more of the so-called "examples". In many cases, the "examples" themselves do not improve consumer understanding, leaving the financial institution facing an untenable dilemma.

Regulation P and the consumer protection regulations

The privacy policy disclosures of Regulation P and those of the typical consumer protection regulations are inconsistent. Reg P requires a financial institution to convey an institution's general policy that applies to all its products. In contrast, the disclosures of the consumer protection regulations require complex, sometimes abstract and often detailed terms unique to a specific product. In many cases, legal and technical terms are necessary to ensure the agreement is enforceable and in compliance with the regulation. "Everyday" terms will change their meaning.

Home Mortgage Disclosure Act (HMDA) (Federal Reserve Regulation C)

HMDA is essentially sets forth data-collection and reporting requirements and, therefore, lends itself to a tiered regulatory requirement. The current exemption for banks with less than $33 million in assets is *far* too low and should be increased to at least $250 million in assets. At a time when regulators are reviewing the reporting burden, the burden associated with HMDA data collection was recently substantially increased (not to mention the dramatically increasing burden of Patriot Act data matching, child support enforcement data matching, and more). Data collection requirements are often difficult to apply and, as a result, add to regulatory burden and the potential for error: for example, assessing loans against the Home Owners Equity Protection Act and reporting rate spreads; determining the date the interest rate on a loan was set; and determining physical property address or census tract information in rural areas. Consumers ultimately pay for the data collection and reporting in higher costs.

Regulation Z

It has been proposesd to add an interpretative rule of construction stating that where the word "amount" is used to describe a disclosure requirement, it refers to a numerical amount throughout Regulation Z. It appears the proposed interpretation is intended to address a court decision regarding the disclosure of payments scheduled to repay a closed-end transaction. This should not have a negative impact on financial institutions.

One of the most burdensome requirements is the three-day right of rescission under Regulation Z. Rarely, if ever, does a consumer exercise the right. Consumers often resent having to wait three additional days to receive loan proceeds after the loan is closed and blame the bank for "withholding" their funds. Even though this is a statutory requirement, the unnecessary inflexibility in the regulation makes it difficult to waive the right of rescission—which further aggravates the problem. If not outright repealed, institutions should at least be given much greater latitude to allow customers to waive the right.

Another problem under Regulation Z is the definition of finance charge. Assessing what must be included in or excluded from the finance charge is difficult to determine, especially fees and charges levied by third parties. The calculation of the finance charge is critical in properly calculating the annual percentage rate. This process desperately needs simplification so that all consumers can understand the annual percentage rate and bankers can easily calculate it.

The resolution of billing-errors within the limited timeframes allowed for credit card disputes is not practical. The rules for resolving billing-errors are heavily weighted in favor of the consumer, making banks increasingly subject to fraud as individuals learn how to game the system, even giving these individuals the ability to avoid legitimate bills at the expense of the institution. There should be increased penalties for frivolous claims and more responsibility expected of consumers.

Summary

While making disclosures more understandable for consumers is an important goal, the proposals have not identified a problem with the existing disclosure requirements. The proposal states that the goal is to facilitate compliance and ensure consumer understanding of the regulations. This might be achieved through standardization of disclosure requirements. Unfortunately, while the regulators require banks to provide customers with understandable disclosures, the regulators do not hold themselves to the same standard in drafting regulations that can be easily understood by anyone. Examiner training needs to be improved to ensure that regulatory requirements are properly and *uniformly* applied.

While banks will appreciate consistency among the regulations, any additional regulatory burden should be justified by a *real* need. Unfortunately, merely making disclosures more uniform between the six regulations will not necessarily translate into improved understanding by consumers.

Finally, it would be much easier for banks, especially community banks that have limited resources, to comply with regulatory requirements if they were based on *products* and all rules that apply to a specific product were consolidated in *one* place.

Thank you for this opportunity to comment.

Sincerely,

/s/

Barbara M. A Walker
Executive Director